

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAIIC.S.M.
CHEE & MARKHAM{PRIVATE }
ATTORNEYS AT LAW

JUL 21 2006

at 2 o'clock and 55 min. M
SUE BEITIA, CLERK

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Atorneys for Limitation Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

In the Matter	)	CV NO. 03-00672 SOM-BMK
)	
of)	
)	
The Complaint of MORNING STAR))	
CRUISES, INC., a Hawaii)	
corporation.)	
SHIROH FUKUOKA,	)	CV NO. 04-00588 SOM-BMK
	)	[CONSOLIDATED]
Plaintiff,	)	LIMITATION PLAINTIFF'S
	)	CONCISE STATEMENT OF
vs.	)	FACTS FOR LIMITATION
MORNING STAR CRUISES, INC.,	)	PLAINTIFF MORNING STAR
Defendant.	)	CRUISES, INC.'S MOTION FOR
	)	SUMMARY JUDGMENT FILED
	)	JULY 21, 2006; CERTIFICATE OF
	)	SERVICE
	)	Hearing: August 21, 2007
	)	Time: 11:15 a.m.
)	

) Judge: Hon. Susan Oki Mollway
)
)
) Trial: February 21, 2007
)
) Time: 9:00 a.m.
)
) Judge: Hon. Susan Oki Mollway
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CONCISE STATEMENT OF FACTS

COMES NOW, Defendant/Limitation Plaintiff MORNING STAR CRUISES, INC. (hereinafter "Morning Star"), by and through its attorneys, the law firm of Chee & Markham, and hereby submits its Concise Statement of Facts as to which there are no genuine issues and which facts are essential for the Court's determination of the issues presented in Limitation Plaintiff's Motion for Summary Judgment filed July 21, 2006, pursuant to LR 56.1 of the Local Rules of Practice for the United States District Court for the District of Hawaii.

1. This incident arises out of an accident that occurred while Plaintiffs/Limitation Defendants participated in an ocean activity, the "SeaWalker" system, on August 14, 2002 in Kaneohe Bay, Hawaii (hereinafter the "incident"). See *Plaintiff/Limitation Defendant's Complaint filed September 8, 2003*, p.5 n. 9.

2. Morning Star filed its Complaint For Exoneration From Or Limitation Of Liability on December 8, 2003, and First Amended Complaint on December 18, 2003, requesting relief under the Limitation of Liability Act, 46 U.S.C. § 181, *et seq*, and Rule F of the *Supplemental Rules for Certain Admiralty and Maritime Claims, Federal Rules of Civil Procedure*.

3. This Court has admiralty jurisdiction over this Limitation Act Suit. See *Order Determining Existence of Admiralty Jurisdiction filed July 19, 2006*.

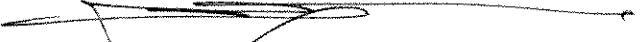
4. On the date of the incident, Morning Star had procedures set out for operation, instruction, safety, first aid and emergency situations. See *Affidavit of Paul S. K. Yip* par. 3-4.

5. On the date of the incident, Morning Star was not negligent in the injury of Mitsuko Fukuoka. See *Yip Aff.* par. 9.

6. Prior to the incident of August 14, 2002, Morning Star had no privity or knowledge that the Vessel was in any way unseaworthy or that it was negligent. See *Yip Aff.* par. 6.

7. In the event that Morning Star Cruises, Inc. is found liable for negligence, Morning Star Cruises had no knowledge or privity of the negligence or the Vessel's unseaworthiness. See *Yip Aff.* par. 6.

DATED: Honolulu, Hawaii, July 21, 2006.


GREGORY K. MARKHAM
KEITH K. KATO
DESIREE HIKIDA MOKUOHAI
Attorneys for /Defendant
Limitation Plaintiff
MORNING STAR CRUISES, INC.

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The Complaint of MORNING STAR))	
CRUISES, INC., a Hawaii)	
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<hr/> SHIROH FUKUOKA,)	CV NO. 04-00588 SOM-BMK
)	
Plaintiff,)	[CONSOLIDATED]
)	
vs.)	
)	
MORNING STAR CRUISES, INC.,)	CERTIFICATE OF SERVICE;
)	
Defendant.)	
)	
)	
)	
)	
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)	
)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was duly served upon the below-identified party at their respective address by means of hand-delivery on July 21, 2006.

ROBERT D. KAWAMURA, ESQ.
550 Halekauwila Street, Suite 106
Honolulu, Hawaii 96813

Attorney for Limitation Defendants

DATED: Honolulu, Hawaii, July 21, 2006.



**GREGORY K. MARKHAM
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Attorneys for /Defendant
Limitation Plaintiff
MORNING STAR CRUISES, INC.